IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1558 of 2005

Deven Niranjan Thakkar .. Petitioner

versus

The Municipal Corporation of

Gr.Mumbai and others .. Respondents

...

Mr.G.V. Murti for the petitioner.

Mr.Vinod Mahadik for the respondent.

CORAM : D.G. KARNIK, J

DATED : 14th June 2006.

P.C:-

1. By this petition, the petitioner challenges the notice cum inspection report dated 19th May 2005 issued under section 394 of the Mumbai Municipal Corporation Act (being Act 3 of 1988 and hereinafter referred to as 'MMC Act').

2. M/s.Dhirajlal & Co. was dealing in the petroleum products and had obtained the necessary licence for storage of the petroleum products under the Petroleum Act 1934 and Petroleum Rules 2002. The said licence permits M/s.Dhirajlal & Co. to store petroleum products of Class-A to the extent of 70,000 litres and petroleum products of Class-B to the extent of 25,000 litres. The petitioner acquired the business of petroleum products from M/s.Dhirajlal & Co. and thereafter the licence for storage granted to M/s.Dhirajlal & Co. under the Petroleum Act has been transferred in the name of the petitioner. A copy of the licence is filed as Exhibit-B to the petition.

3. Under the said licence, the petitioner claims to be entitled to store petroleum products. Accordingly, at the relevant time the petitioner was storing three petroleum products viz. Thinner in 17 drums 200 litres each (3400 litres), Toluene in 1 drum of 200 litres (total quantity 200 litres) and Iso Propyl Alcohol (2 drums of 200 litres (total 400 litres) in the licensed premises. The petitioner

however, has not obtained any licence under section 394 of the MMC Act for the storage of any petroleum products. On 19th May 2005, a team of inspectors of the respondent no.1 Municipal Corporation visited the godown of the petitioner and found that the petitioner had stored three petroleum products mentioned above without obtaining any licence under section 394 of the MMC Act. The respondent no.1 therefore attached the said petroleum products on the ground that the petitioner was storing the petroleum products without obtaining the necessary licence under section 394 of the MMC Act. That action of issuance of notice/inspection report and consequent attachment of the petroleum products is impugned in this petition.

4. Learned counsel for the petitioner submitted that in view of the notification dated 4th May 1950 issued by the Central Government in exercise of the powers conferred under section 31 of the Petroleum Act 1934, the petitioner is not required to obtain any licence u/s.394 of the MMC Act. A copy of the said notification is placed on record at Exhibit C-1. The notification states: in exercise of the powers conferred by section 31 of the Petroleum Act 1934,

the Central Government is pleased to limit the operation of the enactments specified in the schedule (to the notification) in so far as the said enactment relate to the storage or transport of petroleum other than the petroleum which has its flashing point not below 200 degrees fahrenheit to the quantities mentioned thereunder. The notification further states that no licence is required in respect of the petroleum having flashing point below 150 degrees fahrenheit to the quantity is not exceeding 500 gallons provided that none of it is condoned in a receptacle exceeding 200 gallons in capacity. In the schedule of exempted Acts, is mentioned that the City of Bombay Municipal Act 1988, (Bombay Act 3 of 1988) In other words, the provisions of Bombay Municipal Corporation Act 1988 (since renamed as "Mumbai Municipal Corporation Act 1888) are not applicable for storage of petroleum having a flash point below 150 degrees fahrenheit provided that the quantity stored does not exceed 500 gallons.

5. The effect of the aforementioned notification came up for consideration of this Court in Bharat Petroleum Corporation Limited and ors. Vs. The Municipal Corporation of Greater Bombay reported

in 1988(4) Bom.C.R. 3. Interpreting the said notification, this Court has held (paragraph no.21):

> "It is declared that no licence is required under Section 394 of the Bombay Municipal Corporation Act for storage of (i) petroleum products having a flashing point below 24.4 degrees F. or 76 degrees F in quantities exceeding 6 gallons and (ii) for storage of non-dangerous petroleum having its flashing point below 150 degrees F, for quantities exceeding 500 gallons.

This Court thus held that no licence under section 394 of the MMC Act is required for the purpose of storage of petroleum products having its flashing point below 150 degrees fahrenheit for quantities exceeding 500 gallons. Prima facie, under the notification, no licence under section 394 of the MMC Act is required where the quantity of petroleum stored is less than 500 gallons. However, this

Court has taken a view that no licence is required for storage of petroleum having a flashing point below 150 degrees fahrenheit for quantity exceeding 500 gallons.

6. Learned counsel for the respondent does not challenge the correctness of the decision of this Court rendered in Bharat Petroleum Corporation Limited and ors. Vs. The Municipal Corporation of Greater Bombay (Supra). He does not pray for a reference to a larger Bench on the ground that the quantity of petroleum stored must be below 500 gallons and not above 500 gallons. It was also brought to my notice that in Writ Petition no.1464 of 1998 filed by M/s.Dhirajlal & Co. (predecessor of the petitioner) against Municipal Corporation of Bombay division bench, this Court had directed that the Corporation shall examine the case of the petitioner in the light of the judgement of this Court in Bharat Petroleum Corporation Limited and ors. Vs. The Municipal Corporation of Greater Bombay (Supra). Thus, even before the division bench the correctness of the decision of the learned Single Judge in Bharat Petroleum’s case was

not disputed. The matter is squarely covered by the decision of this Court in Bharat Petroleum Corporation Limited and ors. Vs. The Municipal Corporation of Greater Bombay (Supra), the correctness of which is not disputed. In view of the said decision, the petitioner was not required to obtain a licence for storage of the said petroleum having a flashing point below 150 degree fahrenheit. The action of the respondent in issuing notice/inspection report u/s.394 of the MMC Act and attachment of petroleum is thus illegal.

7. In the circumstances, petition is allowed and rule is made absolute in terms of prayer clauses (a), (b) and (d).

(D.G. KARNIK, J)